SPONSOR: Sen. Huxtable & Sen. Lockman & Sen. Sokola &
Sen. Townsend & Rep. K. Johnson &
Rep. Dorsey Walker
Sens. Gay, Hansen, Hoffner, S. McBride, Paradee,
Pinkney, Sturgeon, Walsh; Reps. Bush, Chukwuocha,
Griffith, Lambert, Osienski, Phillips

DELAWARE STATE SENATE
152nd GENERAL ASSEMBLY

SENATE SUBSTITUTE NO. 1
FOR
SENATE BILL NO. 245

AN ACT TO AMEND TITLES 10 AND 29 OF THE DELAWARE CODE RELATING TO RESIDENTIAL MORTGAGE FORECLOSURE AND THE OFFICE OF FORECLOSURE PREVENTION AND FINANCIAL EDUCATION.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 2518, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2518. Office of Foreclosure Prevention and Financial ~~Education [Expires Jan. 1, 2025, under the terms of subsection (d) of this section].~~ Education.

(d) ~~This section expires on January 1, 2025, unless terminated sooner or extended by the General Assembly.~~ [Repealed.]

Section 2. Amend § 5062A, Title 10 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 5062A. Loss mitigation affidavit ~~required [Expires Jan. 1, 2025, under the terms of subsection (e) of this section].~~ required.

(d) This section applies to the following mortgage foreclosure actions:

(1) Actions filed on or after ~~January 19, 2012, and before January 1, 2025.~~ January 19, 2012.

(2) Actions pending in the Superior Court on January 19, 2012, which have not gone to judgment or sale.

(e) ~~This section expires on January 1, 2025, unless terminated sooner or extended by the General Assembly.~~ [Repealed.]

Section 3. Amend § 5062B, Title 10 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 5062B. Required notices.

(a) (1) Except as provided in paragraph (a)(2) of this section, with respect to an owner-occupied 1- to 4-family primary residential property, a mortgage foreclosure action may not be filed until 45 days after a notice of intent to foreclose is sent in the form and manner required by paragraph (a)(3) of this section, which notice may not be sent until the obligor on the loan secured by the mortgage has defaulted on the obligation set forth in the terms of the loan.

(2) The notice of intent to foreclose required under paragraph (a)(1) of this section ~~shall~~ is not ~~be~~ required if the property subject to the mortgage has been abandoned, if the mortgage is held by the seller of the subject property who does not hold more than 5 such mortgages, if the obligor on the loan secured by the mortgage has voluntarily surrendered the property to the obligee, or if the default has continued after the automatic stay has been lifted or terminated in a bankruptcy proceeding, or if the default has continued after the bankruptcy proceeding has been dismissed.

(3) a. The notice of intent to foreclose required under paragraph (a)(1) of this section ~~shall~~ must be ~~sent:~~ sent by all of the following methods:

1. To ~~the borrower(s)~~ all borrowers by certified mail, postage prepaid, return receipt requested, bearing postmark from the United States Postal ~~Service; and~~ Service.

2. To ~~the borrower(s)~~ all borrowers by first class mail.

b. The notice of intent to foreclose ~~shall:~~ must contain all of the following:

1. ~~Contain the~~ The following heading, in English and in Spanish, in at least 30-point boldface type, at the beginning of the notice:

"NOTICE REQUIRED BY DELAWARE LAW: TAKE ACTION TO SAVE YOUR HOME FROM FORECLOSURE"

2. ~~Contain the following statement,~~ A statement, in English and in Spanish, in at least 14-point boldface type, immediately following the ~~heading:~~ heading, in substantially the following form with such additions and deletions as may be recommended by the administrator of the Residential Mortgage Foreclosure Mediation Program from time to time:

"This is an official ~~notice~~ Notice that the mortgage on your home is in default, and the lender intends to foreclose. Specific information about the nature of the default may be provided in the attached pages.

Mortgage foreclosure is a complex process. Some people may approach you about 'saving' your home. You should be careful about any such promises. The State encourages you to become informed about your options in foreclosure before entering into any agreements with anyone in connection with the

foreclosure of your home. There are government agencies and nonprofit organizations that you may contact for helpful information about the foreclosure process. For the name and telephone number of an organization near you, please refer to the list later in this ~~notice, call the Delaware Attorney General's Foreclosure Hotline at 1-800-220-5424, or go to www.DEForeclosureHelp.org.~~ Notice. The State does not guarantee the advice of these organizations. Do not delay dealing with the foreclosure because your options may become more limited as time passes.

EMERGENCY FINANCIAL HELP MAY BE AVAILABLE

The ~~Delaware Emergency Mortgage Assistance Program (DEMAP)~~ Delaware State Housing Authority ("DSHA") may be able to help to save your home. ~~DEMAP is a loan program that provides~~ DSHA has loan programs to provide Delaware homeowners with assistance in preventing residential mortgage foreclosures that result from circumstances beyond ~~the homeowner's~~ their control. If you are delinquent on your mortgage, you should meet with ~~an approved DEMAP housing counseling agency~~ a U.S. Department of Housing and Urban Development ("HUD") Certified Housing Counselor as soon as ~~possible,~~ possible and explore your options ~~with the counseling agency~~ prior to applying to ~~the DEMAP Program.~~ any DSHA programs. To find a ~~counseling agency,~~ HUD Certified Housing Counselor, refer to the list later in this ~~notice, call the Delaware Attorney General's Foreclosure Hotline at 1-800-220-5424, or go to www.DEForeclosureHelp.org.~~ Notice. Take this Notice with you when you meet with the ~~counseling agency."~~ HUD Certified Housing Counselor.

3. ~~Contain,~~ The following phrase, in English and in Spanish, in at least 14-point boldface ~~type, the phrase~~ type:

~~''For~~ "For information on how to reinstate your loan, call the following telephone ~~number: .''~~ number:"

and the telephone number of a contact person or department the homeowner may call to obtain specific instructions on how to reinstate the mortgage ~~loan;~~ loan.

4. ~~Contain a statement,~~ A statement, as of the date of the notice, of the nature of the default, the amount required to cure the default and reinstate the loan, including all past due payments, penalties, and fees, and any other actions the homeowner must take to cure the ~~default;~~ default.

5. ~~Contain a~~ A list of ~~approved DEMAP housing counseling agencies~~ HUD Certified Housing Counselors and ~~the~~ their contact ~~information for each listed agency; and~~ information.

6. The phone number for the Delaware Attorney General's Foreclosure Hotline and the contact information for DSHA's foreclosure prevention programs.

~~6.~~ 7. Any other information that the Superior Court ~~shall~~ may require.

(4) If the borrower(s) may be eligible to apply for assistance through any proprietary loss mitigation program offered by the potential plaintiff or under any federal loss mitigation program in which the potential plaintiff participates, including, but not limited to, the Home Affordable Modification Program, the Second Lien Modification Program, the Home Affordable Unemployment Program, and the Home Affordable Foreclosure Alternatives Program, the potential plaintiff shall include a list of the potentially applicable loss mitigation programs, instructions for how to initiate a completed application for each such program, and a telephone number to call to confirm receipt of an application.

(5) The potential plaintiff (or the servicer sending notice on their behalf) shall include with the notice of intent to foreclose an accounting of the mortgage obligation covering the 12-month period prior to the date of the alleged default. The accounting ~~shall~~ must include, at a minimum, a history of all payments made during the 12-month period prior to the date of the alleged default and the potential plaintiff's allocation of those payments to principal, interest, attorneys' fees, other applicable fees, and the allocation of such payments to the payment installments required by the mortgage. The accounting ~~shall~~ must also ~~include:~~ include all of the following:

a. The due date for the ~~mortgage;~~ mortgage.

b. Any other information as the potential plaintiff may be relying upon as the basis for the claim of ~~default; and~~ default.

c. A certification by the potential plaintiff (or the servicer sending notice on their behalf) that the information contained in the accounting is true and accurate to the best of its knowledge as of the date provided and that the information provided has been relied upon as the basis for the claim of default. Where a servicer provides the certification instead of the potential plaintiff, the servicer shall also identify itself as such and recite in such certification its authority to act on behalf of the potential plaintiff.

(b) As necessary to reflect changes in law, procedure, or loss mitigation options, the Superior Court may prescribe additional or alternate requirements for the form of a notice of intent to foreclose as described under paragraph (a)(3)b. of this section.

(c) ~~The Delaware State Housing Authority~~ DSHA shall make available upon request the list of approved ~~DEMAP housing counseling agencies~~ HUD Certified Housing Counselors and the contact information for each ~~listed agency~~ as required under paragraph (a)(3)b.5. of this section.

Section 4. Amend § 5062C, Title 10 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 5062C. Residential Mortgage Foreclosure Mediation Program ~~[Expires Jan. 1, 2025, under the terms of subsection (v) of this section].~~ Program.

(u) This section applies to mortgage foreclosure actions commenced on or after ~~January 19, 2012, and before January 1, 2025.~~ January 19, 2012.

(v) ~~This section expires on January 1, 2025, unless terminated sooner or extended by the General Assembly.~~ [Repealed.]

Section 4. Amend § 5062D, Title 10 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 5062D. Complaints and ~~answers [Expires Jan. 1, 2025, under the terms of subsection (e) of this section].~~ answers.

(d) This section applies to mortgage foreclosure actions commenced on or after ~~January 19, 2012, and before January 1, 2025.~~ January 19, 2012.

(e) ~~This section expires on January 1, 2025, unless terminated sooner or extended by the General Assembly.~~ [Repealed.]

SYNOPSIS

The Office of Foreclosure Prevention and Financial Education and the Residential Mortgage Foreclosure Mediation Program were created in the wake of the 2008 financial crisis to assist homeowners at risk of foreclosure or already navigating the foreclosure process. Originally intended as temporary programs, the need for these programs is as critical as ever for those facing the loss of their homes. The programs have proven to be important resources in preserving home ownership and educating homeowners on their rights and responsibilities in times of economic contraction and in times of economic expansion. As a result of their successes, the General Assembly has extended the programs multiple times. It is clear that the need for these programs will continue for the foreseeable future. In recognition of this reality, this Act removes the expiration dates from the programs.

Senate Substitute No. 1 for Senate Bill No. 245 makes the following substantive changes:

(1) It adds a requirement that the notice of intent to foreclose include the phone number for the Delaware Attorney General's Foreclosure Hotline and the contact information for Delaware State Housing Authority's foreclosure prevention programs.

(2) The required notice of intent to foreclose now directs homeowners to U.S. Housing and Urban Development Department Certified Housing Counselors for assistance.

Like Senate Bill No. 245, Senate Substitute No. 1 for Senate Bill No. 245 also makes technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual.

Author: Senator Huxtable